

SENATOR F. LEWIS: That is how the process ought to work. The process shouldn't work with this body passing laws and somebody saying "Well we might enforce that one", or "We don't particularly like that one", or "This one is okay". Because the Legislature has not been decisive, Senator Murphy, in total insistence that the laws be complied with, that is why we have agencies, that is why we have subdivisions of government suggesting that they don't have to do it. I think 45 is an important bill, but I think the process should be not to put it over to the citizen to do it. But this Legislature should make sure the necessary safeguards are in there for immediate compliance to law.

PRESIDENT: Senator Luedtke.

SPEAKER LUEDTKE: Mr. President, members of the Legislature. I'm sorry that I'm going to have to advise my good friend, Frank Lewis, that he's just simply wrong about his theory on this. I'm sure that is the first time that Senator Lewis has been wrong in this session, but he is wrong. He's forgetting one very important thing, and that is that we must deal with separation of powers, constitutionally speaking. There is a very definite, clear separation of powers between the Legislative, where we make the laws, and the Executive which carries out those laws, and the Judicial, which interprets them. I'm not lecturing you as teachers, Senator Lewis, but it is very important to understand that you do not usurp the authority of the other branch of government. No administrative agency has, I will agree with you to this extent, no Executive Branch of government has the right to just absolutely refuse to carry out a law. It is only if they have been given the opinion, the advice of their attorney, the Attorney General, that that law cannot be defended, that it is constitutionally suspect, that he cannot defend them, and I remind all of us that the Attorney General himself, or herself, as the case might be, also has a sworn statement, when he or she takes that office, to uphold the Constitution. In other words, they must follow the Constitution along with the rest of us, including those of us in the Legislature. If we didn't have a remedy that would be one thing, but we, as Senator DeCamp has been telling you, there is a very clear remedy--mandamus. We are not without remedy. Senator Frank Lewis and Senator Murphy they say "Yes, but the citizen has to go to court". That is separation of powers, that is why we have courts. We have legislatures to pass the laws, to legislate, we have the Executive to carry them out, we have the courts to interpret those laws. We're not interpreting them. We have our intent, but we don't do that. Senator Barnett read an opinion of the Attorney General which indicated that this Legislature cannot compel that kind of business, even if we had our own attorney we couldn't do that. So what is the solution? I think Senator DeCamp alluded to this when we last debated this bill, and that is the fact that what we ought to do is provide that the citizen who takes his time and money to suggest that such a law is unconstitutional, or that they should be carrying out the law that it is constitutional, whichever way it goes. Then should be, if he wins that law suit, should be paid by the state for his trouble, and for his time, including time off from work or whatever it is. We don't do that now. I suggest that we ought to do that, we ought to assure any citizen. I realize it is fraught with some danger, you might have bounty hunters going out, attacking laws just